

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,

Plaintiff,

No. CIV S-04-2560 DFL JFM P

vs.

JEANNE S. WOODFORD,
et al.,

Defendants.

ORDER

Plaintiff is a former state prisoner on parole proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed August 26, 2005, plaintiff's complaint was dismissed with leave to file an amended complaint. After receiving two extensions of time, plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint, or portion thereof, should only be dismissed for failure to state a
9 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
10 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
11 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
12 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
13 complaint under this standard, the court must accept as true the allegations of the complaint in
14 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
15 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
16 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

17 Plaintiff names thirty-three defendants in his amended complaint. Allegations
18 against defendants are grouped into paragraphs in section IV(10) of the amended complaint. In ¶
19 A of that section, plaintiff alleges that defendants Woodford, Kanan, Carey, Traquina, McIntyre,
20 Kurk, Cheung, and Sheehan failed to provide or authorize required dental work. Based on these
21 allegations, plaintiff raises claims of a violation of his Eighth Amendment rights and a pendent
22 state law negligence claim. The allegations of this paragraph are sufficient to state cognizable
23 claims for relief and the court will order service on said defendants.

24 In ¶ B of that section, plaintiff alleges that defendants Carey, Brumfield, Johns,
25 Moser, Robinson, Knudsen, Chirilla, Whitson, Ferguson, Whitfield, Soliz, Coyle, Holyfield,
26 Fabela, Howard, Sheppard, Boyd, failed to protect plaintiff from excessive force allegedly

1 inflicted by defendant Whitfield in November 2002, that he was “subjected to threats” by
2 defendants Whitfield, Soliz, Knudsen, Chirilla, Whitson, Ferguson, Coyle, Holyfield, Fabela,
3 Howard, Sheppard, and Boyd, and harassment by defendants Whitfield, Soliz, Knudsen, Chirilla,
4 Coyle, Holyfield, Fabela, Howard, Sheppard, Murray, and Groeneweg, Boyd, Whitson, Fabela,
5 and Moore. Plaintiff also alleges that defendants Thompson, Guzman, Brennegan, Whitson, and
6 Fabela interfered with his constitutional right to access the courts, thereby preventing plaintiff
7 from prosecuting his criminal appeal, habeas corpus action, this action, and a civil rights action
8 filed in the United States District Court for the Northern District of California.

9 None of the foregoing allegations state a cognizable claim for relief. In a
10 subsequent section of the complaint, plaintiff sets forth a specific claim of excessive force and/or
11 failure to protect from that use of force against defendants Whitfield, Knudsen, Chirilla, and
12 Soliz. (Amended Complaint, filed December 20, 2005, at ¶ IV(10)(G).) The vague and
13 conclusory reference to this alleged incident and involvement of thirteen other defendants is
14 insufficient to state a cognizable claim for relief against those thirteen individuals. The court will
15 not, therefore, order service of process on said individuals. Similarly, the allegations of threat
16 and harassment are too vague and conclusory to state a cognizable claim for relief and the court
17 will not order service of process on any defendant based on the allegations raised in ¶ IV(10)(B).

18 The final set of allegations in this paragraph are that several defendants interfered
19 with plaintiff’s constitutional right of access to the courts by confiscating his legal property,
20 thereby interfering with his ability to prosecute his criminal appeal, habeas corpus action, this
21 action, and another civil rights action filed in the United States District Court for the Northern
22 District of California. Similar allegations are raised in ¶ VI(10)(F), wherein plaintiff alleges that
23 the legal material was confiscated in retaliation for plaintiff’s exercising his right to access the
24 courts and the inmate grievance procedure. The allegations of retaliation are too vague and
25 conclusory to state a cognizable retaliation claim in this § 1983 action.

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1 In Lewis v. Casey, 518 U.S. 343 (1996), the United States Supreme Court held
2 that prison inmates have a constitutionally protected right to access the courts to bring civil rights
3 actions to challenge their conditions of confinement and to bring challenges to their criminal
4 convictions. Lewis v. Casey, 518 U.S. at 351. In order to state a cognizable claim for violation
5 of this right, plaintiff must allege facts which support a finding that defendants by their acts
6 prevented him from bringing, or caused him to lose, an actionable claim of this type. Id. at 356.

7 Plaintiff has not been prevented from litigating this action by any acts or
8 omissions of state correctional officials. Moreover, review of court records in the United States
9 District Court for the Northern District of California¹ shows that plaintiff's federal habeas corpus
10 action was denied on the merits on September 20, 2005. (Order filed September 20, 2005 in
11 Williby v. Carey, No. C 02-3628 JSW (PR).) That order also demonstrates that plaintiff pursued
12 a direct appeal from his criminal conviction at both levels of appellate review in the state court
13 system. (Id., passim.) In addition, court records from the United States District Court for the
14 Northern District of California also show that the civil rights action to which plaintiff refers was
15 also resolved on the merits on motions to dismiss and for summary judgment. (Order filed
16 January 13, 2006 in No. C 02-0107 JSW (PR).)

17 For the foregoing reasons, plaintiff cannot show that the alleged confiscation of
18 legal material caused actual injury to his right to access the courts and the court will not order
19 service of process on any defendant named in connection therewith. Moreover, plaintiff is
20 cautioned that his allegations to the contrary might constitute a violation of Rule 11 of the
21 Federal Rules of Civil Procedure and that misrepresentations of facts material to claims raised in
22 this action will not be tolerated. The court will not order service of process on the defendants
23 identified in paragraphs IV(10)(B) involved with alleged confiscation of plaintiff's legal
24 material, or on any named defendant on the basis of allegations contained in paragraph IV(10)(F).

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26 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Paragraphs IV(10)(C) and (IV)(10)(D) contain a laundry list of alleged
2 improprieties by defendants named therein, including improper issuance of rules violation
3 reports, classification decisions, placement in administrative segregation, transfers, and
4 subjecting plaintiff to numerous unconstitutional conditions of confinement. There are no
5 allegations of specific acts or omissions by any named defendant. Plaintiff has previously been
6 advised that vague and conclusory allegations against individual defendants are insufficient to
7 state cognizable claims for relief in this § 1983 action. The court will not order service of
8 process on any defendant on the basis of allegations in either of these paragraphs.

9 The court will order service of process on defendants Knudsen, Whitfield,
10 Chirilla, and Soliz on the basis of the allegations contained in paragraph IV(10)(E) and (G) of the
11 amended complaint. These allegations, if proved, may entitle plaintiff to relief in this § 1983
12 action.

13 Finally, in paragraph IV(10)(H) plaintiff claims that defendant Woodford violated
14 plaintiff's Eighth Amendment rights by failing to provide plaintiff with post-parole services,
15 including medical, dental, housing, or employment services. The Eighth Amendment does not
16 give rise to such a duty in state corrections officials. These allegations do not state a cognizable
17 claim for relief and defendant Woodford will not be required to respond to the claim arising from
18 those allegations.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Service is appropriate for the following defendants: Woodford, Kanan, Carey,
21 Traquina, McIntyre, Kurk, Cheung, Sheehan, Knudsen, Whitfield, Chirilla, and Soliz.

22 2. The Clerk of the Court shall send plaintiff twelve USM-285 forms, one
23 summons, an instruction sheet and a copy of the amended complaint filed December 20, 2005.

24 3. Within thirty days from the date of this order, plaintiff shall complete the
25 attached Notice of Submission of Documents and submit the following documents to the court:

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- a. The completed Notice of Submission of Documents;
- b. One completed summons;
- c. One completed USM-285 form for each defendant listed in number 1 above; and
- d. Thirteen copies of the endorsed amended complaint filed December 20, 2005.

4. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

DATED: March 9, 2006.


UNITED STATES MAGISTRATE JUDGE

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will2560.1am

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Plaintiff,

No. CIV S-04-2560 DFL JFM P

vs.

JEANNE S. WOODFORD, et al.,

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NOTICE OF SUBMISSION

OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Amended Complaint

DATED:

Plaintiff